

Yai Yen Hon v Teng Ah Kok & Sim Huat Sdn Bhd & Anor

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FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-147 OF 1994

CHONG SIEW FAI CJ (SABAH AND SARAWAK), PEH SWEE CHIN AND MOHD DZAIDDIN FCJJ

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14 DECEMBER 1996

Civil Procedure — Appeal — Leave to appeal — Appeal to the Supreme Court — Meaning of ‘amount or value of the subject matter of the claim’ — Whether to take into account amount awarded or amount claimed — Courts of Judicature Act 1964 s 68(1)(a)

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The appellant claimed for general and special damages arising out of a collision between the parties in a road traffic accident totalling over RM4m. After a full trial of the action, the learned trial judge on 26 February 1994 found the respondents solely liable but awarded the appellant only RM62,400 as damages. The appellant appealed against the decision. At the commencement of the appeal, counsel for the respondents raised a preliminary objection on the propriety of the appeal contending that since the amount awarded was less than RM100,000, the appellant must first obtain leave under s 68(1)(a) of the Courts of Judicature Act 1964 (‘the Act’) before bringing the appeal, which the appellant did not. Counsel pointed out that the judgment sum RM62,400 (excluding interest) obtained was less than RM100,000. He argued that since it was an accident claim, the amount or value of the subject matter of the claim crystallized in the judgment and that in determining whether leave was necessary, the court vested with the jurisdiction to grant leave must consider the value of the judgment. On the other hand, learned counsel for the appellant contended that the preliminary objection was misconceived and pointed out that the words used in s 68(1)(a) of the Act were: ‘when the amount or value of the subject matter of the claim ...’.

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Held, dismissing the preliminary objection:

- (1) No leave of court was required for this particular appeal. Section 68(1)(a) of the Act used the phrase ‘amount or value of the subject matter of the claim’. The phrase must be read as a whole. In the instant case, the subject matter was the road accident and the claim of the appellant was for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumed little or no significance (see p 140G–H); *Chan Kee Beng v Ramasamy Naidu* [1939] MLJ 113 and *Brett v Thrower* [1945] 2 All ER 284 followed; *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160, *Studham v Stanbridge* [1895] 1 QB 870 and *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 distinguished.

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- A (2) Having regard to the wording in proviso (a) of s 68(1) of the Act and in the light of the authorities cited before the court, since the claim of the appellant was well over RM100,000, he was entitled to appeal without leave even though the trial court had awarded only RM62,400. The effect of s 68(1)(a) of the Act (as it was then in force) was that if the amount or value of the subject matter of the claim was RM100,000 or more, an appeal could be brought without leave. To render it necessary that leave should be obtained, the amount or value would have to be less than RM100,000. There might well be cases where the sums adjudged may be validly taken into account; the instant appeal, however, was not one such case (see p 144F-H); *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160 and *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 distinguished.

[Bahasa Malaysia summary]

- D Perayu menuntut ganti rugi am dan khas yang berbangkit daripada pelanggaran di antara pihak-pihak dalam kemalangan jalan raya berjumlah lebih daripada RM4 juta. Selepas perbicaraan penuh tindakan itu, hakim mahkamah perbicaraan pada 26 February 1994 mendapati penentang-penentang bertanggung jawab sepenuhnya tetapi mengawardkan perayu hanya RM62,400 sebagai ganti rugi. Perayu merayu terhadap keputusan itu. Pada permulaan rayuan itu, peguam penentang-penentang membangkitkan bantahan permulaan berkenaan dengan kewajaran rayuan itu dan menegaskan bahawa oleh kerana jumlah yang diawardkan adalah kurang daripada RM100,000, perayu hendaklah terlebih dahulu memperolehi kebenaran di bawah s 68(1)(a) Akta Mahkamah Kehakiman 1964 ('Akta tersebut') sebelum membuat rayuan, yang mana perayu tidak membuatnya. Peguam menunjukkan bahawa jumlah penghakiman RM62,400 (tidak termasuk faedah) yang diperolehi adalah kurang daripada RM100,000. Beliau menghujahkan bahawa oleh kerana ianya adalah tuntutan kemalangan, jumlah atau nilai perkara subjek tuntutan terbentuk di dalam penghakiman dan bahawa dalam menentukan sama ada kebenaran adalah perlu, mahkamah yang diletakkan dengan bidang kuasa untuk memberikan kebenaran mesti mengambil kira nilai penghakiman. Sebaliknya, peguam kepada perayu menegaskan bahawa bantahan permulaan itu adalah salah anggap dan menunjukkan bahawa perkataan-perkataan yang digunakan dalam s 68(1)(a) Akta tersebut adalah: 'apabila jumlah atau nilai perkara subjek tuntutan...'

Diputuskan, menolak bantahan awal:

- I (1) Kebenaran mahkamah tidak diperlukan bagi rayuan ini. Seksyen 68(1)(a) Akta tersebut menggunakan ungkapan 'jumlah atau nilai perkara subjek tuntutan'. Ungkapan itu mesti dibaca secara keseluruhan. Dalam kes sekarang, perkara subjek adalah

kemalangan jalan raya dan tuntutan perayu adalah untuk jumlah jauh melebihi RM100,000. Oleh itu, jumlah yang diputuskan pada perbicaraan adalah tidak penting (lihat ms 140G–H); *Chan Kee Beng v Ramasamy Naidu* [1939] MLJ 113 dan *Brett v Thrower* [1945] 2 All ER 284 diikuti; *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160, *Studham v Stanbridge* [1895] 1 QB 870 dan *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 dibeza.

- (2) Mengambil kira perkataan dalam proviso (a) s 68(1) Akta tersebut dan berdasarkan autoriti-autoriti yang disebutkan di hadapan mahkamah, oleh kerana tuntutan perayu adalah melebihi RM100,000, beliau berhak untuk membuat rayuan tanpa kebenaran walaupun mahkamah perbicaraan telah mengawardkan hanya RM62,400. Kesan s 68(1)(a) Akta tersebut (pada ketika ia dikuatkuasakan) adalah jika jumlah atau nilai perkara subjek tuntutan adalah RM100,000 atau lebih, rayuan boleh dibuat tanpa kebenaran. Untuk menjadikan kebenaran perlu diperolehi, jumlah atau nilai hendaklah kurang daripada RM100,000. Mungkin terdapat kes-kes di mana jumlah yang diputuskan boleh dengan sahnya diambil kira; rayuan sekarang, bagaimanapun, bukan salah satu daripada kes seumpama itu (lihat ms 144F–H); *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160 dan *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 dibeza.]

Notes

For cases on leave to appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 478–506.

Cases referred to

Brett v Thrower [1945] 2 All ER 284 (folld)
Chan Kee Beng v Ramasamy Naidu [1939] MLJ 113 (folld)
Dreesman v Harris (1854) 9 Exch 485 (refd)
Monohary Teresa & Anor v Tan Ah Lek [1995] 3 MLJ 365 (distd)
Smith v Gill [1896] 2 QB 166 (refd)
Studham v Stanbridge [1895] 1 QB 870 (distd)
Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor [1991] 3 MLJ 160 (distd)

Legislation referred to

Courts of Judicature Act 1964 s 68(1)(a)
 Johor Courts Enactment s 56
 Rules of the High Court 1980 O 18 r 19
 County Courts Act 1934 s 105 [UK]
 County Courts Act 1959 s 108 [UK]
 County Court Rules 1889 O 50A r 12 [UK]

A **Appeal from:** Suit No 23-46-1991 (High Court, Johor Bahru)

Wong Kim Fatt (PM Mahalingam and Gilbert Chai with him) (*Gulam & Wong*) for the appellant/plaintiff.

Izzat Othman (Balbinder Kaur with him) (*Chua Brothers, Azzat & Izzat*) for the respondents/defendants.

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Cur Adv Vult

C **Chong Siew Fai CJ (Sabah and Sarawak)** (delivering the judgment of the court): This appeal concerns a claim by the first plaintiff/appellant in the High Court in Johor Bahru for damages arising out of a collision between his car driven by his driver (the second plaintiff) in which he was a passenger, and a lorry belonging to the first defendant/respondent and driven by the second defendant/respondent, the servant and/or agent of the first defendant. The appellant claimed for general and special damages totalling over RM4m. After a full trial of the action, the learned trial judge found the respondents solely liable but awarded the appellant only RM9,200 for special damages and RM53,200 for general damages totalling RM62,400. The appellant appealed against the decision. The judgment was handed down on 26 February 1994 and notice of appeal was filed on 19 March 1994.

E At the commencement of the appeal, counsel for the respondents raised a preliminary objection on the propriety of the appeal contending that since the amount awarded was less than RM100,000, the appellant must first obtain leave under s 68(1)(a) of the Courts of Judicature Act 1964 ('the Act') before bringing this appeal, which the appellant did not.

F Section 68(1)(a) of the Act applicable at the material time read:

No appeal shall be brought to the Supreme Court in any of the following cases:

G (a) when *the amount or value of the subject-matter of the claim* (exclusive of interest) is less than one hundred thousand ringgit, except with the leave of the Supreme Court or a judge of the High Court;
(Emphasis added.)

H For the respondents, learned counsel pointed out that the judgment sum RM62,400 (excluding interest) obtained on 26 February 1994 was less than RM100,000. He argued that since it was an accident claim, the amount or value of the subject matter of the claim crystallized in the judgment and that in determining whether leave was necessary, the court vested with the jurisdiction to grant leave must consider the value of the judgment, citing the following passage of the judgment of Hashim Yeop A Sani CJ (Malaya) in *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160 at p 163 in support:

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The operative words in s 68(1)(a) are 'the *amount or value* of the subject matter of the claim'. The words 'at the trial' which appeared in s 68(1)(a)

before the amendment in 1987 have been left out which restricted the scope to the amount or value of the subject matter at the trial. The present s 68(1)(a) is wider in scope and covers winding up matters as in this case where the judgment debt which had brought the winding-up order is less than RM100,000. The term 'subject matter' was dealt with in *Studham v Stanbridge* [1895] 1 QB 870 which was an interpleader proceeding. Cave J said (at p 872):

'The point raised is as to the meaning of O LA r 12 of the County Court Rules 1889. The higher scale of costs in force in the county court is threefold. Column A applies to cases where the subject matter or the sum recovered exceeds £10 and does not exceed £20 and col B where it exceeds £20 and does not exceed £50, and col C where it exceeds £50. The question here is whether the claimant's costs come under Col C, as the learned county court judge has decided, or whether they do not. Rule 12 provides that in interpleader proceedings, the 'subject matter' shall mean in the case of a claimant (which is this case) 'the amount of the value of the goods his claim to which is allowed, plus the amount of the damage (if any) adjudged'. Now, here the county court judge has found that the amount of the value of the goods the claim to which was allowed was £51, and he has adjudged £10 damages. Column C therefore applies because the subject matter exceeds £50.'

Then came the following conclusion of the learned Chief Justice upon which the respondents heavily relied (at the same page):

It is clear therefore the court does not merely look at the relief sought but also considers the value of the judgment if it can be ascertained.

On the other hand, learned counsel for the appellant contended that the preliminary objection was misconceived pointing out that the words used in s 68(1)(a) of the Act were: 'when the amount or value of the subject matter of the claim ...'. He relied on *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 (CA). As regard *Yap Fook Cheong's* case, he pointed out that the claim was less than RM100,000. Finally, counsel besought for time to apply for leave to appeal should his contention fail.

I have considered the matter. In my view, no leave of court was required for this particular appeal. Section 68(1)(a) of the Act used the phrase 'amount or value of the subject matter of the claim'. The phrase must be read as a whole. In the instant case under appeal, the subject matter is the road traffic accident and the claim of the first plaintiff/appellant was for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumed little or no significance.

In support of my above view, I would refer to the following enactments and cases.

Proviso (c) to s 108 of the County Courts Act 1959 (UK) ran thus:

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...

Provided that, without the leave of the judge, there shall be no appeal under this section —

- A (a) ...
 (b) ...
 (c) in proceedings in interpleader *where the money claimed, or the value of the goods or chattels claimed or the proceeds thereof, does not exceed twenty pounds*. (Emphasis added.)

B Of course, the said proviso (c) related to interpleader proceedings. That is not relevant in considering the point in issue. What is material is the weight or significance attached to the word 'claimed'.

In construing that the right of appeal under the said proviso (c) was dependent on the amount claimed and not on the amount recovered, the case *Dreesman v Harris* (1854) 9 Exch 485 was cited (see 7 *Halsbury's Statutes* (3rd Ed) at p 373; 10 *Halsbury's Laws* (4th Ed) paras 654–655). In *Dreesman v Harris*, the action for breach of a contract was commenced in the county court. The claim exceeded £20, but the judge gave judgment for £12 only. On appeal, the question of the right to appeal without leave was raised. The relevant enactment appearing in the judgment ran thus:

D ... that if either party *in any cause of the amount* to which jurisdiction is given to the county courts by this Act shall be dissatisfied with the determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same.

E For the respondents, it was argued that the appeal would not lie on the ground that the judgment was for a sum less than £20, and that if an appeal were allowed here, a party might reserve to himself the right of appeal in all cases by extending his claim to a sum exceeding £20. The argument was rejected. It was held to the effect that the cause was appealable without leave and that an appeal would lie where the amount of the claim exceeded £20 although the judgment appealed against gave a smaller amount. Likewise, a defendant could appeal as of right respecting his counterclaim if the counterclaim was for over £20 even though the plaintiff's claim was below £20 (see *Smith v Gill* [1896] 2 QB 166; *Brett v Thrower* [1945] 2 All ER 284).

G *Chan Kee Beng v Ramasamy Naidu* [1939] MLJ 113 involved the construction of s 56 of the Johor Courts Enactment (Cap 54). The relevant provision of the said s 56 at the material time read:

56(i) No appeal shall lie from the decision of a Court of a Magistrate to a Court of a Judicial Commissioner in any civil suit the amount or the value of the subject-matter whereof does not exceed one hundred dollars;

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In *Chan Kee Beng's* case, the plaintiff's claim was for RM250 but the magistrates' court gave judgment for RM100 only. The question arose as to whether the proper procedure for the dissatisfied party was to appeal against the judgment. The issue turned on whether the determining factor was the amount or value of the subject matter of the *appeal* or the amount or value of the subject matter of the *civil suit*. In his judgment, Mills J said (at p 114):

I have no hesitation in construing s 56 to mean this: 'If the amount or value of the subject matter of any civil suit does not exceed RM100, no appeal shall lie.'

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He went on to hold that 'the determining factor is not the amount or value of the subject matter of the appeal, but the amount or value of the subject matter of the civil suit.' And he ruled that since the amount claimed in the civil suit exceeded RM100, an appeal would lie. *Chan Kee Beng's* case therefore decided — on a construction of a 56 of the Johor Courts Enactment (Cap 54) then prevailing — that the amount was determined not by the award handed down by the trial court but by the amount of the subject matter of the suit.

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Brett v Thrower [1945] 2 All ER 284 is also authority that the claim determined whether leave of appeal was required. It was a counterclaim for damages for nuisance in the sum of £20. The counterclaim was dismissed. The defendant appealed without first obtaining the leave of the court. The plaintiff took preliminary objection that the appellate court had no jurisdiction to hear the appeal since the claim was one respecting which no appeal lay without the leave of the county court judge and such leave had not been obtained. The law in point was the County Courts Act 1934, s 105 which provided:

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If any party to any proceedings in a county court is dissatisfied with the determination or direction of the judge in point of law or equity or upon the admission or rejection of any evidence, the party aggrieved ... may appeal therefrom to the Court of Appeal ... subject to ... the Rules of the Supreme Court: Provided that, without the leave of the judge, there shall be no appeal:

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(a) in any action founded on contract or on tort (other than an action for the recovery of land or an action in which the title to any hereditament has come in question) where the debt or damage claimed does not exceed £20.

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Obviously, since the counterclaim was £20, it did not 'exceed £20'.

The Court of Appeal recognized that the phrase 'where the debt or damage claimed' in proviso (a) of the said s 105 was to be construed as covering not only a claim by the plaintiff but a counterclaim by the defendant (see *Smith v Gill* [1896] 2 QB 166). It also held — on the wording of the said proviso (a) — that the fact that the addition of a claim for an ancillary injunction to the claim for damages not exceeding £20 did not take the case out of proviso (a) of the said s 105.

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The preliminary objection that the appeal was improper without the leave of the county court was upheld and the appeal was dismissed.

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I now revert to *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160 and *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 (CA).

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In *Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160, a default judgment for RM67,360.69 with interest was entered against a company, Urachom Foam (M) Sdn Bhd, of which the

- A two appellants were directors. The first respondent then successfully obtained a winding-up order against the said company. By an action, the appellants sought to challenge the said winding-up order. The first respondent applied to strike out the appellants' writ and statement of claim under O 18 r 19 of the Rules of the High Court 1980. The senior assistant registrar refused the application. The first respondent appealed to the judge in chambers. The learned trial judge allowed the appeal. The appellants appealed to the (then) Supreme Court against the decision of the learned trial judge. Before the Supreme Court, a preliminary point on the impropriety of the appeal was taken by counsel for the respondents in that the appeal was filed without leave of the court under s 68 (1)(a) of the Act. Hashim Yeop A Sani CJ (Malaya) (as he then was) — in dealing with the issue of whether leave was required under the said s 68(1)(a) — relied on *Studham v Stanbridge* [1895] 1 QB 870, and concluded (which I have reproduced above) thus:
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It is clear therefore the court does not merely look at the relief sought but also considers the value of the judgment if it can be ascertained.

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It is now necessary to consider how that conclusion was carried out.

In *Studham v Stanbridge* — which was a case on interpleader's summon — the claimant claimed the right to the goods seized in execution of a judgment obtained in the county court. He deposited a sum of £36 into court towards payment for the execution and all costs. The judge of the county court adjudged that the claimant was entitled to all goods seized which was valued at £51 and also awarded him £10 damages with costs. The question arose as to whether the claimant was entitled to have his costs taxed under col A, B, or C of the County Court Rules 1889.

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Under the County Court Rules, the claimant would be entitled to have his costs taxed under col C of the higher scale of costs 'where the subject matter or sum recovered exceeds £50'. It was argued on behalf of the execution creditor that the 'subject matter' of the interpleader proceedings was the sum the claimant paid into court. In rejecting the argument, Cave J said (at p 872):

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The question here is whether the claimant's costs come under col C, as the learned county court judge has decided, or whether they do not. *Rule 12 provides that in interpleader proceedings the 'subject matter' shall mean in the case of a claimant (which is this case) 'the amount of the value of the goods his claim to which is allowed, plus the amount of the damage (if any) adjudged'.*

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Now, here the county court judge has found that the amount of the value of the goods the claim to which was allowed was £51, and he had adjudged £10 damages. Column C therefore applies because the subject matter exceeds £50. (Emphasis added.)

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From the above-quoted passage of Cave J's judgment, it is clear that the definition of 'subject matter' was derived directly from O 50A r 12 of the County Court Rules 1889 under which the damages adjudged was an element to be taken into consideration. Therefore, the observation of Hashim Yeop A Sani CJ (Malaya) that in deciding whether or not to grant

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leave under s 68 (1)(a) the court '*does not merely look at the relief sought but also considers the value of the judgment if it can be ascertained*' must be viewed in the light of the definition of '*subject matter*' provided in the said r 12 of the County Court Rules 1889.

In *Monohary Teresa & Anor v Tan Ah Lek* [1995] 3 MLJ 365 (CA), the said s 68(1)(a) was also considered. It was also a running down action. The court of first instance assessed damages on 100% liability to be RM250,050.34 but since the plaintiff was found 25% to blame he was awarded RM187,537.84 damages. Taking the view that the amount recoverable from her was less than RM250,000 (the prevalent statutory imposed amount below which leave to appeal had to be sought), the defendant applied to the Court of Appeal for leave to appeal. However, by the time the application came up for hearing, the time limited for appeal (ie one month from the date of the decision of the learned trial judge) had long expired. The Court of Appeal held that leave to appeal was not required although it granted the defendant an extension of one week to file a notice of appeal.

In my view, the facts in *Monohary's* case are distinguishable and the case is of no assistance to the appeal presently before us. In that case, the claim of the plaintiff was not quantified in the writ or action. It was the trial court of first instance that assessed the total damages at RM250,050.34 and awarded the plaintiff the sum of RM187,537.84 after apportionment of liability whereas in the present appeal before us, the plaintiff's claim was well over RM100,000 (the statutory amount then prevalent) except that the learned trial judge awarded the plaintiff RM62,400 in general and special damages.

I agree with the Court of Appeal that the said s 68(1)(a), as it stands, is unsatisfactory; but any amendment thereto, if considered desirable, is outside the sphere of the court.

Having regard to the wording in proviso (a) of s 68(1) of the Act and in the light of the authorities cited above, I am of the view that since the claim of the first plaintiff/appellant was well over RM100,000, he was entitled to appeal without leave even though the trial court had awarded RM62,400. In my view, the effect of s 68(1)(a) of the Act (as it was then in force) was that if the amount or value of the subject matter of the claim was RM100,000 or more, an appeal could be brought without leave. To render it necessary that leave should be obtained, the amount or value would have to be less than RM100,000. There might well be cases where the sums adjudged may be validly taken into account; the instant appeal before us, however, is not one such case.

Preliminary objection dismissed.

Reported by Loo Lai Mee